

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MAJOR WHITE,

Plaintiff,

-v-

6:11-CV-222 (NAM/DEP)

ABDOOL ROSHAN KHAN,

Defendant.

APPEARANCES:

Victor A. Caponera , Jr.
3 Atrium Drive, Suite 210
Albany, New York 12203
Attorney for Plaintiff

Hiscock & Barclay, LLP
David M. Cost, Esq., of counsel
80 State Street
Albany, New York 12207
Attorney for Defendant

Hon. Norman A. Mordue, U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Defendant moves (Dkt. No. 17) for summary judgment in this action for personal injuries allegedly sustained when plaintiff fell down the stairs while moving into an apartment in a multiple dwelling unit owned by defendant. Defendant contends that the action, commenced on February 25, 2011, is barred by the applicable three-year limitations period. *See* N.Y.C.P.L.R. § 214(5). The unverified complaint (Dkt. No. 1), filed by Elmer R. Keach, III, Esq., plaintiff's former counsel, alleges that the accident occurred on February 27, 2008. On January 6, 2012, plaintiff, by new counsel, filed a verified "Answer to Defendant's Request for Admission" in

which plaintiff admitted that the accident underlying his claim occurred on February 17, 2008, more than three years prior to commencement of this action. Plaintiff does not oppose the present motion to dismiss.

It is therefore

ORDERED that defendant's motion (Dkt. No. 17) for summary judgment dismissing the action is granted; and it is further

ORDERED that the case is dismissed with prejudice on the ground that plaintiff failed to commence the action within the three-year statute of limitations set forth in NYCRR § 214(5).

IT IS SO ORDERED.

Date: September 21, 2012
Syracuse, New York


Honorable Norman A. Mordue
U.S. District Judge